In the High Court of Uttaranchal , at Nainital

Second Appeal No. 449 of 2001
(Old No. 225 of 1985)

Chandra Singh Rawat S/o Late Gyan Singh Rawat,
Shopkeeper, House No.3036 Sadar Bazar,
Post Office Gumkhal, Patti Langur Palla,
District Pauri Garhwal ….. Plaintiff-Appellant.

Versus

1. Dinesh Chandra
R/o Vilalge Gumkhal, P.O. Gumkhal
Patti Langur Palla, District Pauri Garhwal.
2- Ganardan Prasad Patwari Chauki Village
Gaum Patti Langur Palla,
District Pauri Garhwal ….. Defendants-Respondents.

Sri V.K. Bisht, learned counsel for the appellant.
Sri V.B.S. Negi, learned counsel for the respondents.

Hon'ble B.C. Kandpal, J.

This Second Appeal, U/S 100 C.P.C., has been preferred against the judgment and order dated 28-5-1985, passed by the District Judge, Pauri Garhwal, in Civil Appeal No. 01 of 1985, Chandra Singh versus Dinesh Chandra and another, whereby the appeal was dismissed with cost.

2- Brief facts of the case are that the plaintiff Chandra Singh purchased 4 Muthis land of plot No. 3036 (Khata No. 14) of village Gum, Patti Langur Palla, District Pauri Garhwal from one Gopal Singh and constructed a shop over the said land. The defendant Dinesh Chandra also purchased land of plot No. 3037. It was alleged that the possession of the purchased land of the defendant was given in plot No. 3036 belonging to the plaintiff whereas shop of the defendant Dinesh Chandra existed in plot No. 3037 and he had nothing to do with plot No. 3036, but he wrongfully constructed a tin shed on the spot. Proceedings U/S 145 Cr.P.C. between the parties were initiated and ended in favour of the plaintiff. The defendant was unauthorized occupant of the land

in suit. Hence the plaintiff filed a suit before the Munsif Lansdowne for eviction of the defendant from constituted part of plot No. 3036 and handing over the possession of the land to the plaintiff.

3. The defendants contested the suit by filing W.S. before the trial court and denied the claim of the plaintiff. It was stated that the suit land did not constitute part of plot No. 3036 and the same belong to Dinesh Chandra, defendant, who is the owner of adjoining plot No. 3037. It was also alleged that the plaintiff's house and shop at the spot covered an area equal to the area of land purchased by him from Gopal Singh.

4- The learned Munsif framed relevant issues on the pleadings of the parties. Thereafter the parties led evidence in support of their claims. The trial court on hearing the learned counsel for the parties and having perused the evidence on record, did not find the plaintiff owner of the land in dispute and dismissed his suit with cost.

5- Feeling aggrieved, the plaintiff preferred appeal before the lower appellate court. The lower appellate court dismissed the appeal vide impugned and order dated 28-5-85.

6- Against the aforesaid judgment and order dated 28-5-1985, the appellant has filed this second appeal before the Allahabad High Court, which was transferred to this court on creation of new State.

7- At the time of admission of this appeal, following substantial questions of law were formulated:-

1- Whether the view of the lower appellate court as well as the trial court was justified in basing their finding on presumption and surmises while not taking into consideration the existence of the commissioner's report when it was proved by the plaintiff-appellant on the aforesaid report prepared by the Advocate Commissioner that the disputed

shop, i.e. the tin-shed stands constructed over plot No. 3036 and the said report of the Advocate Commissioner was based on the survey map and survey measurements and was admissible in evidence?.

2- Whether the courts below were justified in shifting the burden of proof of dispossession on the plaintiff-appellant when the defendant-respondent failed to adduce any evidence that the disputed tin-shed stands over plot No. 3037 which was purchased by him?.

3- Whether the courts below were justified in shifting the burden on the plaintiff-appellant when the onus of proof was on the defendant-respondent to prove that he has not made any encroachment over plot No. 3036 and no evidence was adduced by him?.

8- Heard learned counsel for the parties and perused the record.

9- Perusal of the Khautani paper No. 7-C/2 shows that the total area of plot No. 3036 is 7 Muthis, out of which 4 Muthis was purchased by the plaintiff and 3 Muthis area of the plot remained with Gopal Singh. The boundary of 4 Muthis land of plaintiff has been given in the sale deed, according to which in the east of the land, there exists the house of Dinesh Prasad, in the west the land of Shyam Singh and others and in the north and south there is government land. The Advocate Commissioner reported that the plaintiff is occupying 561 square feet land at the spot more than the area of 4 Muthis land, i.e., 540 square feet. The Advocate Commissioner also found that the construction of the defendant is on his own land of plot No. 3037. The plaintiff also could not adduce any evidence before the trial court that the defendant forcibly dispossessed him from the land in suit.

10- The judgment and order passed by the lower appellate court shown that the court below has discussed all the factual aspects and the evidence relating to the relevant facts involved in this case. The factual aspect is not to be interfered with in this second appeal. The substantial questions of law as formulated by the appellant in the

memo of appeal are decided against him and in favour of the defendants/respondents.

11- Learned counsel for the plaintiff/appellant also submitted that now the plaintiff/appellant has no grievance, as he has been given possession of his entire land at the spot.

12- In view of the above discussion the second appeal is devoid of any merit and is liable to be dismissed.

13- The Second Appeal is dismissed. No order as to cost.

(B.C. Kandpal, J.)

Dated: 22-9-2006
ISB